



RECORDATION NO. 23165 FILED

OCT 17 '00 11-09 AM  
TS  
SURFACE TRANSPORTATION BOARD

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September 18, 2000

Mr. Vernon A. Williams  
Office of the Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423-0001



Dear Secretary Williams:

I have enclosed an original and one counterpart of the document(s) described below, to be recorded pursuant to Section 11301 of Title 49 of the U.S. Code.

This document is a Mortgage and Commercial Security Agreement, a primary document, dated August 16, 2000.

The names and addresses of the parties to the documents are as follows:

Mortgagor: Mt. Hood Railroad Company  
110 Railroad Avenue  
Hood River, Oregon 97031

Mortgagee: U.S. Bank National Association  
Metro Oregon Business Banking  
PL-7 Commercial Loan Service – West  
555 Southwest Oak, Portland, Oregon 97204.

A description of the equipment covered by the document follows:

<u>TYPE OF EQUIPMENT</u>	<u># OF EACH TYPE</u>	<u>IDENTIFYING MARKS</u>	<u>TRUCK SERIAL #</u>	<u>MANUFACTURER</u>
Kitchen Car	1	RS03	C26304	Great Northern
Dining Car	2	RS02	C2588-1	Pullman Standard
		RS04	C2588	Pullman Standard
Lounge Car	1	RS01	25846-1	American Car and Foundry

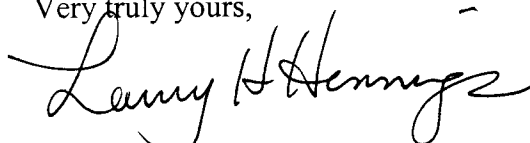
Letter to Secretary Williams  
Surface Transportation Board  
August 25, 2000

Page 2.

A fee of \$26.00 is enclosed. Please return the original and any extra copies not needed by the Board for recordation to U.S. Bank National Association, Metro Oregon Business Banking, PL-7 Commercial Loan Service – West, 555 Southwest Oak, Portland, Oregon 97204.

A short summary of the document to appear in the index follows: Mortgage and Commercial Security Agreement between Mt. Hood Railroad Company (Mortgagor) whose address is 110 Railroad Avenue, Hood River, Oregon 97031, and U.S. Bank National Association (Mortgagee) whose address is Metro Oregon Business Banking, PL-7 Commercial Loan Service – West, 555 Southwest Oak, Portland, Oregon 97204, covering 4 railroad cars owned by Mortgagor.

Very truly yours,

A handwritten signature in cursive script, reading "Laury H. Hennings".

Laury H. Hennings  
Senior Corporate Counsel

LHH:lrb

Enclosures

MORTGAGE AND  
COMMERCIAL SECURITY AGREEMENT

Dated as of: August 16, 2000

Mt. Hood Railroad Company  
110 Railroad Avenue  
Hood River, Oregon 97031

U.S. Bank National Association  
Metro Oregon Business Banking  
PL-7 Commercial Loan Service – West  
555 Southwest Oak  
Portland, Oregon 97204

RECORDATION NO. 23165 FILED  
OCT 17 '00 11-09 AM  
SURFACE TRANSPORTATION BOARD

THIS MORTGAGE AND COMMERCIAL SECURITY AGREEMENT is entered into between Mt. Hood Railroad Company ("Mortgagor", "Grantor" or "MHRC"); and U.S. Bank National Association ("Mortgagee", "Lender" or "U.S. Bank"). For valuable consideration, MHRC mortgages, conveys and grants to U.S. Bank a security interest in the Collateral to secure the Indebtedness, and agrees that U.S. Bank shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which U.S. Bank may have by law.

**DEFINITIONS.** The following words shall have the following meanings when used in this Agreement. Terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

**Agreement.** The word "Agreement" means this Mortgage and Commercial Security Agreement, as it may be amended or modified from time to time, together with all exhibits and schedules attached hereto from time to time.

**Collateral.** The word "Collateral" means the following described property of MHRC, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

The following 4 railroad cars:	TYPE OF EQUIPMENT	IDENTIFYING MARKS	TRUCK SERIAL #
<u>MANUFACTURER</u>			
Great Northern	Kitchen Car	RS03	C26304
Pullman Standard	Dining Car	RS02	C2588-1
Pullman Standard	Dining Car	RS04	C2588
American Car and Foundry	Lounge Car	RS01	25846-1

In addition, the word "Collateral" includes all the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

- (a) All attachments, accessions, accessories, tools, parts, supplies, increases, and additions to and all replacements of and substitutions for any property described above.
- (b) All products and produce of any of the property described in this Collateral section.
- (c) All accounts, general intangibles, instruments, rents, monies, payments, and all other rights, arising out of a sale, lease, or other disposition of any of the property described in this Collateral section.
- (d) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this Collateral section.
- (e) All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of MHRC's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

**Event of Default.** The words "Event of Default" mean and include without limitation any of the Events of Default set forth below in the section titled "Events of Default."

**Guarantor.** The word "Guarantor" means and includes without limitation each and all of the guarantors, sureties, and accommodation parties in connection with the Indebtedness.

**Indebtedness.** The word "Indebtedness" means the indebtedness evidenced by the Note, including all principal and interest, together with all other indebtedness and costs and expenses for which MHRC is responsible under this Agreement or under any of the Related Documents. In addition, the word "Indebtedness" includes all other obligations, debts and liabilities, plus interest thereon, of MHRC, or any one or more of them, to U.S. Bank, as well as all claims by U.S. Bank against MHRC, or any one or more of them, whether existing now or later; whether they are voluntary or involuntary, due or not due, direct or indirect, absolute or contingent, liquidated or unliquidated; whether MHRC may be liable individually or jointly with others; whether MHRC may be obligated as guarantor, surety, accommodation party or otherwise; whether recovery upon such indebtedness may be or hereafter may become barred by any statute of limitations; and whether such indebtedness may be or hereafter may become otherwise unenforceable.

**Lender.** The word "Lender" means U.S. Bank National Association, its successors and assigns.

**Note.** The word "Note" means either or both of the promissory note dated August 16, 2000, in the principal amount of \$500,000.00 from Mt. Hood Railroad Company to U.S. Bank and the promissory note dated June 5, 1999, in the principal amount of \$970,000 from Mt. Hood Railroad Company to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of and substitutions for such notes.

**Related Documents.** The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**RIGHT OF SETOFF.** MHRC hereby grants U.S. Bank a contractual security interest in and hereby assigns, conveys, delivers, pledges, and transfers all of MHRC's right, title and interest in and to MHRC's accounts with U.S. Bank (whether checking, savings, or some other account), including all accounts held jointly with someone else and all accounts MHRC may open in the future, excluding, however, all IRA and Keogh accounts, and all trust accounts for which the grant of a security interest would be prohibited by law. MHRC authorizes U.S. Bank, to the extent permitted by applicable law, to charge or setoff all Indebtedness against any and all such accounts.

**OBLIGATIONS OF MHRC.** MHRC warrants and covenants to U.S. Bank as follows:

**Organization.** MHRC is a corporation which is duly organized, validly existing, and in good standing under the laws of the State of Oregon.

**Authorization.** The execution, delivery, and performance of this Agreement by MHRC have been duly authorized by all necessary action by MHRC and do not conflict with, result in a violation of, or constitute a default under (a) any provision of its articles of incorporation or organization, or bylaws, or any agreement or other instrument binding upon MHRC or (b) any law, governmental regulation, court decree, or order applicable to MHRC.

**Perfection of Security Interest.** MHRC agrees to execute such financing statements and to take whatever other actions are requested by U.S. Bank to perfect and continue U.S. Bank's lien and security interest in the Collateral. Upon request of U.S. Bank, MHRC will deliver to U.S. Bank any and all of the documents evidencing or constituting the Collateral, and MHRC will note U.S. Bank's interest upon any and all chattel paper if not delivered to U.S. Bank for possession by U.S. Bank. MHRC hereby appoints U.S. Bank as its irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect or to continue the lien and security interest granted in this Agreement. U.S. Bank may at any time, and without further authorization from MHRC, file a carbon, photographic or other reproduction of any financing statement or of this Agreement for use as a mortgage or financing statement. MHRC will reimburse U.S. Bank for all expenses for the perfection and the continuation of the perfection of U.S. Bank's lien and security interest in the Collateral. MHRC promptly will notify U.S. Bank before any change in MHRC's name including any change to the assumed business names of MHRC. **This is a continuing mortgage and security agreement and will continue in effect even though all or any part of the Indebtedness is paid in full and even though for a period of time MHRC may not be indebted to U.S. Bank.**

**No Violation.** The execution and delivery of this Agreement will not violate any law or agreement governing MHRC or to which MHRC is a party, and its certificate or articles of incorporation and bylaws do not prohibit any term or condition of this Agreement.

**Enforceability of Collateral.** To the extent the Collateral consists of accounts, chattel paper, or general intangibles, the Collateral is enforceable in accordance with its terms, is genuine, and complies with applicable laws concerning form, content and manner of preparation and execution, and all persons appearing to be obligated on the Collateral have authority and capacity to contract and are in fact obligated as they appear to be on the Collateral.

**Location of the Collateral.** MHRC, upon request of U.S. Bank, will deliver to U.S. Bank in form satisfactory to U.S. Bank a schedule of real properties and Collateral locations relating to MHRC's operations, including without limitation the following: (a) all real property owned or being purchased by MHRC; (b) all real property being rented or leased by MHRC; (c) all storage facilities owned, rented, leased, or being used by MHRC; and (d) all other properties where Collateral is or may be located. Except in the ordinary course of its business, MHRC shall not remove the Collateral from its existing locations without the prior written consent of U.S. Bank.

**Removal of Collateral.** MHRC shall keep the Collateral (or to the extent the Collateral consists of intangible property such as accounts, the records concerning the Collateral) at MHRC's address shown above, or at such other locations as are acceptable to U.S. Bank. Except in the ordinary course of its business, including the sales of inventory, MHRC shall not remove the Collateral from its existing locations without the prior written consent of U.S. Bank. To the extent that the Collateral consists of vehicles, or other titled property, MHRC shall not take or permit any action which would require application for certificates of title for the vehicles outside the State of Oregon, without the prior written consent of U.S. Bank.

**Transactions Involving Collateral.** Except for inventory sold or accounts collected in the ordinary course of MHRC's business, MHRC shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral. While MHRC is not in default under this Agreement, MHRC may sell inventory, but only in the ordinary course of its business and only to buyers who qualify as a buyer in the ordinary course of business. A sale in the ordinary course of MHRC's business does not include a transfer in partial or total satisfaction of a debt or any bulk sale. MHRC shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest, encumbrance, or charge, other than the security interest provided for in this Agreement, without the prior written consent of U.S. Bank. This includes liens and security interests even if junior in right to the liens and security interests granted under this Agreement. Unless waived by U.S. Bank, all proceeds from any disposition of the Collateral (for whatever reason) shall be held in trust for U.S. Bank and shall not be commingled with any other funds; provided however, this requirement shall not constitute consent by U.S. Bank to any sale or other disposition. Upon receipt, MHRC shall immediately deliver any such proceeds to U.S. Bank.

**Title.** MHRC represents and warrants to U.S. Bank that it holds good and marketable title to the Collateral, free and clear of all liens and encumbrances except for the lien of this Agreement. No financing statement, mortgage, equipment trust agreements, conditional sales agreement, security agreement or an other security document covering any of the Collateral is on file in any public office (whether state, federal or local) other than those which reflect the mortgage and security interest created by this Agreement or to which U.S. Bank has specifically consented. MHRC shall defend U.S. Bank's rights in the Collateral against the claims and demands of all other persons.

**Collateral Schedules and Locations.** Insofar as the Collateral consists of inventory, MHRC shall deliver to U.S. Bank, as often as U.S. Bank shall require, such lists, descriptions, and designations of such Collateral as U.S. Bank may require to identify the nature, extent, and location of such Collateral. Such information shall be submitted for MHRC and each of its subsidiaries or related companies.

**Maintenance and Inspection of Collateral.** MHRC shall maintain all tangible Collateral in good condition and repair. MHRC will not commit or permit damage to or destruction of the Collateral or any part of the Collateral. U.S. Bank and its designated representatives and agents shall have the right at all reasonable times to examine, inspect, and audit the Collateral wherever located. MHRC shall immediately notify U.S. Bank of all cases involving the return, rejection, repossession, loss or damage of or to any Collateral; of any request for credit or adjustment or of any other dispute arising with respect to the Collateral; and generally of all happenings and events affecting the Collateral or the value or the amount of the Collateral.

**Taxes, Assessments and Liens.** MHRC will pay when due all taxes, assessments and liens upon the Collateral, its use or operation, upon this Agreement, upon any promissory note or notes evidencing the Indebtedness, or upon any of the other Related Documents. MHRC may withhold any such payment or may elect to contest any lien if MHRC is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as U.S. Bank's interest in the Collateral is not jeopardized in U.S. Bank's sole opinion. If the Collateral is subjected to a lien which is not discharged within fifteen (15) days, MHRC shall deposit with U.S. Bank cash, a sufficient corporate surety bond or other security satisfactory to U.S. Bank in an amount adequate to provide for the discharge of the lien plus any interest, costs, attorneys' fees or other charges that could accrue as a result of foreclosure or sale of the Collateral. In any contest MHRC shall defend itself and U.S. Bank and shall satisfy any final adverse judgment before enforcement against the Collateral. MHRC shall name U.S. Bank as an additional obligee under any surety bond furnished in the contest proceedings.

**Compliance With Governmental Requirements.** MHRC shall comply promptly with all laws, ordinances, rules and regulations of all governmental authorities, now or hereafter in effect, applicable to the ownership, production, disposition, or use of the Collateral. MHRC may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as U.S. Bank's interest in the Collateral, in U.S. Bank's opinion, is not jeopardized.

**Hazardous Substances.** MHRC represents and warrants that the Collateral never has been, and never will be so long as this Agreement remains a lien on the Collateral, used for the generation, manufacture, storage, transportation, treatment, disposal, release or threatened release of any hazardous waste or substance, as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing or intended to protect human health or the environment ("Environmental Laws"). The terms "hazardous waste" and "hazardous substance" shall also include, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos. The representations and warranties contained herein are based on MHRC's due diligence in investigating the Collateral for hazardous wastes and substances. MHRC hereby (a) releases and waives any future claims against U.S. Bank for indemnity or contribution in the event MHRC becomes liable for cleanup or other costs under any Environmental Laws, and (b) agrees to indemnify and hold harmless U.S. Bank against any and all claims and losses resulting from a breach of this provision of this Agreement, or as a result of a violation of any Environmental Laws. This obligation to indemnify shall survive the payment of the Indebtedness and the satisfaction of this Agreement.

**Maintenance of Casualty Insurance.** MHRC shall procure and maintain all risks insurance, including without limitation fire, theft and liability coverage together with such other insurance as U.S. Bank may require with respect to the Collateral, in form, amounts, coverages and basis reasonably acceptable to U.S. Bank and issued by a company or companies reasonably acceptable to U.S. Bank. MHRC, upon request of U.S. Bank, will deliver to U.S. Bank from time to time the policies or certificates of insurance in form satisfactory to U.S. Bank, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days' prior written notice to U.S. Bank and not including any disclaimer of the insurer's liability for failure to give such a notice. Each insurance policy also shall include an endorsement providing that coverage in favor of U.S. Bank will not be impaired in any way by any act, omission or default of MHRC or any other person. In connection with all policies covering assets in which U.S. Bank holds or is offered a security interest, MHRC will provide U.S. Bank with such loss payable or other endorsements as U.S. Bank may require. If MHRC at any time fails to obtain or maintain any insurance as required under this Agreement, U.S. Bank may (but shall not be obligated to) obtain such insurance as U.S. Bank deems appropriate, including if it so chooses "single interest insurance," which will cover only U.S. Bank's interest in the Collateral.

**Application of Insurance Proceeds.** MHRC shall promptly notify U.S. Bank of any loss or damage to the Collateral. U.S. Bank may make proof of loss if MHRC fails to do so within fifteen (15) days of the casualty. All proceeds of any insurance on the Collateral, including accrued proceeds thereon, shall be held by U.S. Bank as part of the Collateral. If U.S. Bank consents to repair or replacement of the damaged or destroyed Collateral, U.S. Bank shall, upon satisfactory proof of expenditure, pay or reimburse MHRC from the proceeds for the reasonable cost of repair or restoration. If U.S. Bank does not consent to repair or replacement of the Collateral, U.S. Bank shall retain a sufficient amount of the proceeds to pay all of the Indebtedness, and shall pay the balance to MHRC. Any proceeds which have not been disbursed within six (6) months after their receipt and which MHRC has not committed to the repair or restoration of the Collateral shall be used to prepay the Indebtedness.

**Insurance Reserves.** U.S. Bank may require MHRC to maintain with U.S. Bank reserves for payment of insurance premiums, which reserves shall be created by monthly payments from MHRC of a sum estimated by U.S. Bank to be sufficient to produce, at least fifteen (15) days before the premium due date, amounts at least equal to the insurance premiums to be paid. If fifteen (15) days before payment is due, the reserve funds are insufficient, MHRC shall upon demand pay any deficiency to U.S. Bank. The reserve funds shall be held by U.S. Bank as a general deposit and shall constitute a non-interest-bearing account which U.S. Bank may satisfy by payment of the insurance premiums required to be paid by MHRC as they become due. U.S. Bank does not hold the reserve funds in trust for MHRC, and U.S. Bank is not the agent of MHRC for payment of the insurance premiums required to be paid by MHRC. The responsibility for the payment of premiums shall remain MHRC's sole responsibility.

**Insurance Reports.** MHRC, upon request of U.S. Bank, shall furnish to U.S. Bank reports on each existing policy of insurance showing such information as U.S. Bank may reasonably request including the following: (a) the name of the insurer; (b) the risks insured; (c) the amount of the policy; (d) the property insured; (e) the then current value on the basis of which insurance has been obtained and the manner of determining that value; and (f) the expiration date of the policy. In addition, MHRC shall upon request by U.S. Bank (however not more often than annually) have an independent appraiser satisfactory to U.S. Bank determine, as applicable, the cash value or replacement cost of the Collateral.

**MHRC'S RIGHT TO POSSESSION.** Until default, MHRC may have possession of the tangible personal property and beneficial use of all the Collateral and may use it in any lawful manner not inconsistent with this Agreement or the Related Documents, provided that MHRC's right to possession and beneficial use shall not apply to any Collateral where possession of the Collateral by U.S. Bank is required by law to perfect U.S. Bank's security interest in such Collateral. If U.S. Bank at any time has possession of any Collateral, whether before or after an Event of Default, U.S. Bank shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if U.S. Bank takes such action for that purpose as MHRC shall request or as U.S. Bank, in U.S. Bank's sole discretion, shall deem appropriate under the circumstances, but failure to honor any request by MHRC shall not of itself be deemed to be a failure to exercise reasonable care. U.S. Bank shall not be required to take any steps necessary to preserve any rights in the Collateral against prior parties, nor to protect, preserve or maintain any security interest given to secure the Indebtedness.

**EXPENDITURES BY LENDER.** If not discharged or paid when due, U.S. Bank may (but shall not be obligated to) discharge or pay any amounts required to be discharged or paid by MHRC under this Agreement, including without limitation all taxes, liens, security interests, encumbrances, and other claims, at any time levied or placed on the Collateral. U.S. Bank also may (but shall not be obligated to) pay all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by U.S. Bank for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by U.S. Bank to the date of repayment by MHRC. All such expenses shall become a part of the Indebtedness and, at U.S. Bank's option, will (a) be payable on demand, (b) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (i) the term of any applicable insurance policy or (ii) the remaining term of the Note, or (c) be treated as a balloon payment which will be due and payable at the Note's maturity. This Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which U.S. Bank may be entitled upon the occurrence of an Event of Default.

**EVENTS OF DEFAULT.** Each of the following shall constitute an Event of Default under this Agreement:

**Default on Indebtedness.** Failure of MHRC to make any payment when due on the Indebtedness.

**Other Defaults.** Failure of MHRC to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or in any other note, security agreement, lease agreement or lease schedule, loan agreement or other agreement, whether now existing or hereafter made, between MHRC and U.S. Bancorp or any direct or indirect subsidiary of U.S. Bancorp.

**False Statements.** Any warranty, representation or statement made or furnished to U.S. Bank by or on behalf of MHRC under this Agreement, the Note or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished.

**Defective Collateralization.** This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral documents to create a valid and perfected security interest or lien) at any time and for any reason.

**Insolvency.** The dissolution or termination of MHRC's existence as a going business, the insolvency of MHRC, the appointment of a receiver for any part of MHRC's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against MHRC.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of MHRC or by any governmental agency against the Collateral or any other collateral securing the Indebtedness. This includes a garnishment of any of MHRC's deposit accounts with U.S. Bank.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or such Guarantor dies or becomes incompetent.

**Insecurity.** U.S. Bank, in good faith, deems itself insecure.

**RIGHTS AND REMEDIES ON DEFAULT.** If an Event of Default occurs under this Agreement, at any time thereafter, U.S. Bank shall have all the rights of a secured party under the Oregon Uniform Commercial Code. In addition and without limitation, U.S. Bank may exercise any one or more of the following rights and remedies:

**Accelerate Indebtedness.** U.S. Bank may declare the entire Indebtedness, including any prepayment penalty which MHRC would be required to pay, immediately due and payable, without notice.

**Assemble Collateral.** U.S. Bank may require MHRC to deliver to U.S. Bank all or any portion of the Collateral and any and all certificates of title and other documents relating to the Collateral. U.S. Bank may require MHRC to assemble the Collateral and make it available to U.S. Bank at a place to be designated by U.S. Bank. U.S. Bank also shall have full power to enter upon the property of MHRC to take possession of and remove the Collateral. If the Collateral contains other goods not covered by this Agreement at the time of repossession, MHRC agrees U.S. Bank may take such other goods, provided that U.S. Bank makes reasonable efforts to return them to MHRC after repossession.

**Sell the Collateral.** U.S. Bank shall have full power to sell, lease, transfer, or otherwise deal with the Collateral or proceeds thereof in its own name or that of MHRC. U.S. Bank may sell the Collateral at public auction or private sale. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, U.S. Bank will give MHRC reasonable notice of the time after which any private sale or any other intended disposition of the Collateral is to be made unless MHRC has signed, after an Event of Default occurs, a statement renouncing or modifying MHRC's right to notification of sale. The requirements of reasonable notice shall be met if such notice is given at least ten (10) days before the time of the sale or disposition. All expenses relating to the disposition of the Collateral, including without limitation the expenses of retaking, holding, insuring, preparing for sale and selling the Collateral, shall become a part of the Indebtedness secured by this Agreement and shall be payable on demand, with interest at the Note rate from date of expenditure until repaid.

**Appoint Receiver.** To the extent permitted by applicable law, U.S. Bank shall have the following rights and remedies regarding the appointment of a receiver: (a) U.S. Bank may have a receiver appointed as a matter of right, (b) the receiver may be an employee of U.S. Bank and may serve without bond, and (c) all fees of the receiver and his or her attorney shall become part of the Indebtedness secured by this Agreement and shall be payable on demand, with interest at the Note rate from date of expenditure until repaid.

**Collect Revenues, Apply Accounts.** U.S. Bank, either itself or through a receiver, may collect the payments, rents, income, and revenues from the Collateral. U.S. Bank may at any time in its discretion transfer any Collateral into its own name or that of its nominee and receive the payments, rents, income, and revenues therefrom and hold the same as security for the Indebtedness or apply it to payment of the Indebtedness in such order of preference as U.S. Bank may determine. Insofar as the Collateral consists of accounts, general intangibles, insurance policies, instruments, chattel paper, choses in action, or similar property, U.S. Bank may demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose, or realize on the Collateral as U.S. Bank may determine, whether or not Indebtedness or Collateral is then due. For these purposes, U.S. Bank may, on behalf of and in the name of MHRC, receive, open and dispose of mail addressed to MHRC; change any address to which mail and payments are to be sent; and endorse notes, checks, drafts, money orders, documents of title, instruments and items pertaining to payment, shipment, or storage of any Collateral. To facilitate collection, U.S. Bank may notify account debtors and obligors on any Collateral to make payments directly to U.S. Bank.

**Obtain Deficiency.** If U.S. Bank chooses to sell any or all of the Collateral, U.S. Bank may obtain a judgment against MHRC for any deficiency remaining on the Indebtedness due to U.S. Bank after application of all amounts received from the exercise of the rights provided in this Agreement. MHRC shall be liable for a deficiency even if the transaction described in this subsection is a sale of accounts or chattel paper.

**Other Rights and Remedies.** U.S. Bank shall have all the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, as may be amended from time to time. In addition, U.S. Bank shall have and may exercise any or all other rights and remedies it may have available at law, in equity, or otherwise.

**Cumulative Remedies.** All of U.S. Bank's rights and remedies, whether evidenced by this Agreement or the Related Documents or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by U.S. Bank to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of MHRC under this Agreement, after MHRC's failure to perform, shall not affect U.S. Bank's right to declare a default and to exercise its remedies.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Applicable Law.** This Agreement has been delivered to U.S. Bank and accepted by U.S. Bank in the State of Oregon. If there is a lawsuit, MHRC agrees upon U.S. Bank's request to submit to the jurisdiction of the courts of Multnomah County, the State of Oregon. Subject to the provisions on arbitration, this Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

**Attorneys' Fees; Expenses.** MHRC agrees to pay upon demand all of U.S. Bank's costs and expenses, including attorneys' fees and U.S. Bank's legal expenses, incurred in connection with the enforcement of this Agreement. U.S. Bank may pay someone else to help enforce this Agreement, and MHRC shall pay the costs and expenses of such enforcement. Costs and expenses include U.S. Bank's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (and including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated postjudgment collection services. MHRC also shall pay all court costs and such additional fees as may be directed by the court.

**Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Multiple Parties; Corporate Authority.** All obligations of MHRC under this Agreement shall be joint and several, and all references to MHRC shall mean each and every MHRC. This means that each of the persons signing below is responsible for all obligations in this Agreement.

**Notices.** All notices required to be given under this Agreement shall be given in writing, may be sent by telefacsimile (unless otherwise required by law), and shall be effective when actually delivered or when deposited with a nationally recognized overnight courier or deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, MHRC will keep U.S. Bank informed at all times of MHRC's current address(es).

**Power of Attorney.** MHRC hereby appoints U.S. Bank as its true and lawful attorney-in-fact, irrevocably, with full power of substitution to do the following: (a) to demand, collect, receive, receipt for, sue and recover all sums of money or other property which may now or hereafter become due, owing or payable from the Collateral; (b) to execute, sign and endorse any and all claims, instruments, receipts, checks, drafts or warrants issued in payment for the Collateral; (c) to settle or compromise any and all claims arising under the Collateral, and, in the place and stead of MHRC, to execute and deliver its release and settlement for the claim; and (d) to file any claim or claims or to take any action or institute or take part in any proceedings, either in its own name or in the name of MHRC, or otherwise, which in the discretion of U.S. Bank may seem to be necessary or advisable. This power is given as security for the Indebtedness, and the authority hereby conferred is and shall be irrevocable and shall remain in full force and effect until renounced by U.S. Bank.

**Preference Payments.** Any monies U.S. Bank pays because of an asserted preference claim in Borrower's bankruptcy will become a part of the Indebtedness and, at U.S. Bank's option, shall be payable by Borrower as provided above in the "EXPENDITURES BY LENDER" paragraph.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

**Successor Interests.** Subject to the limitations set forth above on transfer of the Collateral, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

**Waiver.** U.S. Bank shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by U.S. Bank. No delay or omission on the part of U.S. Bank in exercising any right shall operate as a waiver of such right or any other right. A waiver by U.S. Bank of a provision of this Agreement shall not prejudice or constitute a waiver of U.S. Bank's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by U.S. Bank, nor any course of dealing between U.S. Bank and MHRC, shall constitute a waiver of any of U.S. Bank's rights or of any of MHRC's obligations as to any future transactions. Whenever the consent of U.S. Bank is required under this Agreement, the granting of such consent by U.S. Bank in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of U.S. Bank.

**Waiver of Co-obligor's Rights.** If more than one person is obligated for the Indebtedness, Borrower irrevocably waives, disclaims and relinquishes all claims against such other person which Borrower has or would otherwise have by virtue of payment of the Indebtedness or any part thereof, specifically including but not limited to all rights of indemnity, contribution or exoneration.

MHRC ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE AND COMMERCIAL SECURITY AGREEMENT, AND MHRC AGREES TO ITS TERMS.

MT. HOOD RAILROAD COMPANY

By: \_\_\_\_\_

Title: Board Chairman

U.S. BANK NATIONAL ASSOCIATION

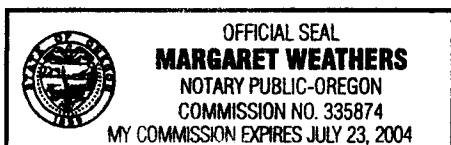
By: \_\_\_\_\_

Title: VP

STATE OF OREGON )

COUNTY OF Hood River ) ss

This instrument was acknowledged before me on the 11 day of September, 2000, by And Duckwall, as Board Chairman of Mt. Hood Railroad Company.



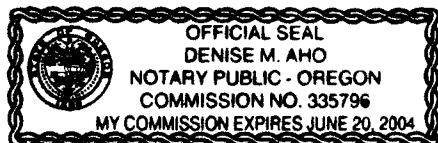
Margaret Weathers  
Notary Public for Oregon

My commission expires: July 23, 2004

STATE OF OREGON )

COUNTY OF Multnomah ) ss

This instrument was acknowledged before me on the 15th day of September, 2000, by Pat Campbell, as VP of U.S. Bank National Association.



Denise M. Aho  
Notary Public for Oregon

My commission expires: June 20, 04